

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID WIT, et al.,
Plaintiffs,

v.

UNITED BEHAVIORAL HEALTH,
Defendant.

Case No. 14-cv-02346-JCS

SCHEDULING ORDER

The Court has considered the parties' proposed case schedules and sets the following schedule:

1. With respect to the breach of fiduciary duty claim, the Court adopts the dates proposed by the parties for briefing issues (1) and (2), namely, whether Plaintiffs' breach of fiduciary duty claim is a "disguised claim for benefits," subject to the exhaustion requirement," *Wit v. United Behavioral Health*, 79 F.4th 1068, 1089 (9th Cir. 2023); and to what extent the Ninth Circuit reversed the judgment on the merits of the breach of fiduciary duty claim. Accordingly, Plaintiffs' opening brief shall be filed by **March 13, 2024**; UBH's Opposition shall be filed by **April 17, 2024**; Plaintiffs' reply shall be filed by **May 8, 2024**.
2. With respect to the denial of benefits claim, the Court finds that briefing is appropriate on the question of whether the UBH should be permitted to develop additional evidence to defend against Plaintiffs' class certification motion. Plaintiffs shall file the opening brief and shall fully disclose therein the definitions of all classes and subclasses it will seek to certify. The briefing dates will coincide with the dates for briefing the breach of fiduciary duty issues. In particular, Plaintiffs' opening brief shall

1 be filed by **March 13, 2024**; UBH's Opposition shall be filed by **April 17, 2024**;
2 Plaintiffs' reply shall be filed by **May 8, 2024**.

- 3 **3.** A hearing on the motions will be held on **June 21, 2024 at 9:30 a.m. by Zoom**
4 **webinar, id. 161 926 0804 password 050855.**

5 **IT IS SO ORDERED.**

6
7 Dated: February 15, 2024

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9 JOSEPH C. SPERO
United States Magistrate Judge